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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION)
OF THE PARENT-CHILD RELATIONSHIP OF)
J.A.W., M.Z.V., and A.D.W., minor children, and)
DAWN WITTERS,)
Appellant-respondent,)
vs.)
WARRICK COUNTY OFFICE OF)
FAMILY AND CHILDREN,)
Appellee-petitioner.)

No. 87A01-0702-JV-71

APPEAL FROM THE WARRICK CIRCUIT COURT
The Honorable David O. Kelley, Judge
Cause Nos. 87C01-0502-JT-051, 87C01-0411-JT-127, 87C01-0411-JT-128

July 2, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent Dawn Witters appeals the termination of the parent-child relationship between herself and J.A.W., M.Z.V., and A.D.W., three of her seven minor children. In particular, Witters argues that the trial court did not have subject matter jurisdiction over the Children in Need of Services (CHINS) or termination proceedings because of procedural irregularities and that appellee-petitioner Warrick County Office of Family and Children (OFC) did not establish that, among other things, termination is in the children's best interests. Finding no error, we affirm the judgment of the trial court.

FACTS¹

A.D.W. was born on August 29, 2000, M.Z.V. was born on October 7, 2002, and J.A.W. was born on November 28, 2003. On June 6, 2003, Witters was pushing eight-month-old M.Z.V. in a stroller at Boonville City Lake. She became angry, picked up the stroller with the infant still in it, and threw the stroller, which landed upside-down, in the direction of the lake. Witters was eventually arrested and charged with child neglect, false reporting, and battery with injury as a result of the incident.²

On June 10 and June 12, 2003, respectively, the OFC removed M.Z.V. and A.D.W. from Witters's custody. On June 18, 2003, the OFC filed a petition declaring M.Z.V. and A.D.W. to be CHINS because of the stroller incident and because Witters had been "unable to secure housing, food, clothing and medical care for the children for the [previous] two

¹ The OFC did not file an appellee's brief in this matter. The power to terminate the relationship between parent and child is one of the State's most devastating and vital responsibilities. In the future, perhaps the State should consider whether it has an obligation to follow through by taking part in appeals taken from termination proceedings.

months.” Appellant’s App. p. 27-28. OFC also noted Witters’s “violent tendencies” Id. at 28. J.A.W. was born later that year, on November 28, 2003, and the OFC removed him from Witters’s custody while he was still in the hospital following his birth. On December 1, 2003, the OFC filed a petition declaring J.A.W. to be a CHINS because of Witters’s history with her other children, because “she ha[d] made little progress on managing her anger,” id. at 26, and because she was homeless and unprepared to care for a newborn, tr. p. 9. Ultimately, all three children were found to be CHINS.

On February 28, 2005, the OFC filed a petition seeking to terminate the parent-child relationship between Witters and the three children. The trial court held a hearing on the petition on November 21, 2006. At the hearing, the OFC presented evidence that Witters had failed to meet nearly all of the dispositional goals put in place as a result of the CHINS proceeding, including being present for visits with the children, learning effective parenting skills, managing her anger, taking part in therapy sessions for depression, anger, and stress management, managing her substance abuse problem, and maintaining a suitable, clean residence. At the time of the hearing, Witters lived at the strip club of which she was a manager.

Since being removed from Witters’s care, the children have matured and thrived in foster care. Inasmuch as J.A.W. was removed from Witters’s care when he was only two days old, his foster family is the only one he has ever known. On November 27, 2006, the

² As of December 1, 2003, Witters was awaiting sentencing for those crimes, but the record does not reveal what sentences were imposed.

trial court terminated Witters's parental rights with respect to J.A.W., M.Z.V., and A.D.W. Witters now appeals.

DISCUSSION AND DECISION

I. Standard of Review

The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. But parental interests are not absolute and must be subordinated to the child's interests in determining the proper disposition of a petition to terminate parental rights. In re D.D., 804 N.E.2d 258, 265 (Ind. Ct. App. 2004). Thus, parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. Id.

When reviewing the termination of parental rights, we neither reweigh the evidence nor judge witness credibility, considering, instead, only the evidence and reasonable inferences that are most favorable to the judgment. We will not set aside the trial court's judgment terminating a parent-child relationship unless it is clearly erroneous. In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct. App. 1997).

II. Subject Matter Jurisdiction

Witters argues that the trial court did not have subject matter jurisdiction over these proceedings because of two procedural irregularities. First, she complains that the CHINS petition bore an incorrect version of A.D.W.'s name. Witters, however, is appealing from the termination order, not the CHINS determination. She has waived her right to challenge the CHINS determination, which took place in 2003. And in any event, it is apparent that the

petition merely contained a scrivener's error that in no way caused prejudice to Witters or the children.

Second, Witters directs our attention to the termination orders entered by the trial court—one for each child. She notes that although the captions on each order are correct, the text of each order purports to terminate the parent-child relationship between only M.Z.V. and Witters. Again, it is apparent that this is merely a scrivener's error. Witters's parental rights to all three children were the focus of these proceedings and the caption of each order is correct. Consequently, this inadvertent error in no way leads to a conclusion that the trial court's decision should be reversed.³

III. Evidence

Witters next argues that the OFC failed to make the requisite statutory showing to warrant termination. The termination statute requires the OFC to prove by clear and convincing evidence that

(B) there is a reasonable probability that:

- (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
- (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and

³ She also complains that the children's father's parental rights were not terminated herein, but the relationships between the children and their respective fathers has no bearing on their relationships with Witters. The fathers' parental rights were not at issue during these proceedings; all of the evidence at the hearing pertained only to Witters. Consequently, it was not erroneous for the trial court to terminate only Witters's parental rights.

(D) there is a satisfactory plan for the care and treatment of the child.

I.C. § 31-35-2-4(b)(2). The OFC need not rule out all possibilities of change; rather, the OFC need establish only that there is a reasonable probability that the parent's behavior will not change. Matter of Campbell, 534 N.E.2d 273, 275 (Ind. Ct. App. 1989). The trial court must evaluate habitual patterns of conduct to determine whether there is a substantial probability of future neglect and need not wait until the children are irreversibly impaired to terminate the parent-child relationship. Matter of Danforth, 542 N.E.2d 1330, 1331 (Ind. 1989); In re J.W., 779 N.E.2d 954, 960 (Ind. Ct. App. 2002).

Witters argues that the OFC failed to prove that the conditions that resulted in the children's removal would not be remedied, that the continuation of the parent-child relationship poses a threat to the children's well-being, or that termination is in their best interests.

The children were removed from Witters's care because she picked up and threw to the ground a stroller containing then-infant M.Z.W. and because she was homeless and unprepared to care for a newborn at the time of J.A.W.'s birth. After the children were found to be CHINS, Witters began to work towards a goal of reunification. But at the time of the hearing, her caseworker testified that she had failed to meet any of the dispositional goals put in place during the CHINS proceedings. Among other things, she missed at least one-third of the scheduled visits with the children with no valid excuse, she failed to learn effective and efficient parenting skills, she had not gotten her anger under control, she had a drug screen that tested positive for methamphetamine and amphetamine, she had not improved her

housekeeping skills, and she was unable to maintain a suitable residence—at the time of the hearing, she lived in the strip club for which she worked. Tr. p. 12-15.

Witters's therapist testified that Witters missed at least half of their scheduled therapy sessions and that the majority of those times, she did not have a valid excuse. Id. at 33-34. The therapist also testified that even though Witters's live-in boyfriend had been convicted of felony child abuse and J.A.W. was the victim of the abuse, the boyfriend and Witters still lived together. Id. at 41-43.

The children's guardian ad litem (GAL) testified that when she made an unannounced visit to Witters's residence in February 2006, the house was a mess. Id. at 57-58. To reach the front door, the GAL had to climb over many large objects, including a washing machine, that were on the porch. There were open food containers and many beer bottles everywhere. There were large, full trash cans in the middle of the house. Although it was 10:30 in the morning, the GAL awakened Witters and her family when she arrived. Witters stated that they had overslept. The GAL observed at least one school-age child in the home who should have been in school at that time of day. Although it was wintertime, there was no heat in the house and the GAL spent the visit shivering with her coat on. Id. at 58. The five-month-old baby in the house was wrapped in a fleece blanket with no clothes on. The GAL did not return to visit Witters's residence because she did not feel safe. Id. at 60. The GAL concluded that Witters blames everyone else for her problems and refuses to accept any responsibility.

Neither the caseworker nor the therapist nor the GAL recommended that the children be reunified with Witters. It is undisputed that the children have thrived in their foster care placement. Given this evidence, we find that the trial court properly concluded that the OFC made the requisite statutory showing by clear and convincing evidence and that its decision to terminate the parent-child relationship between Witters and these three children was not clearly erroneous.

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and CRONE, J., concur.